

City of Lafayette Staff Report

To: Mayor Anderson and City Council Members

From: Christine Sinnette, Senior Planner

Date Written: July 21, 2008

Meeting Date: July 28, 2008

Subject: Agreement for Payment of the Lamorinda Transportation Development Mitigation Fee between the City of Lafayette and the Contra Costa Jewish Day School, located at 3800 Mt. Diablo Boulevard. APN 241-010-046.

Background

On December 6, 2007, the Planning Commission approved a land use permit (L01-07) for the Contra Costa Jewish Day School (CCJDS) on property owned by Temple Isaiah. The approval included a phase 1 classroom and a master plan for two future phases for the construction of a multi-purpose/gymnasium building and additional classroom. Maximum enrollment at buildout is limited to 300 students. Construction on the phase 1 classroom is scheduled to start this month. Prior to issuance of a building permit, CCJDS must pay the Lamorinda Sub-Regional Transportation Fee set by the Lamorinda Fee and Finance Authority (LLFA).

CCJDS previously asked the Lafayette City Council to support their request for a waiver of the LLFA transportation mitigation fee because they are a non-profit organization. The Council did not indicate its support.

CCJDS then requested the LLFA to waive the fees, but the LLFA did not take any action on the request. Member jurisdictions were to discuss this item at their respective Council meetings and return to the LLFA for further discussion. The LLFA did agree with the applicant's analysis that the fees should be calculated based on PM peak hour trips generated. According to the applicant's traffic study, 15 PM peak hour trips would be generated at the phase 1 buildout of 180 students.

The LLFA's Joint Exercise of Powers Agreement (JEPA) does not specify when fees are to be collected although by custom all three jurisdictions typically collect the fee at the issuance of building permits. The Lafayette Municipal Code specifies that these fees are to be collected at issuance of building permits.

Staff Comments

CCJDS is now requesting that the City enter into an agreement allowing them to pay the fee based on student enrollment/vehicle trips as they are generated. The project is a multi-phase master plan with the first phase accommodating up to 180 students; however, when phase 1 is

completed, the school is unlikely to have 180 students. The applicant anticipates growing to 180 students over many years. CCJDS, Councilmember Tatzin, and staff discussed various options for payment of the fee with no waivers or reductions. Since the project is unlikely to generate the PM peak hour trips associated with a 180 student school when phase 1 is completed and operational, it was proposed that the City and CCJDS enter into an agreement to pay the fees as the students/vehicle trips are generated rather than all at once prior to issuance of a building permit.

A draft agreement has been prepared which has CCJDS paying the PM peak hour trips generated with their current level of enrollment at the time of building permit issuance. Then every October, the school will report to the City on their enrollment and pay the transportation mitigation for any associated growth in the school's population. The yearly fees will be paid according to the fee rate in place at the time a particular yearly fee is paid (i.e. in 2008, the applicant pays the currently adopted fee, in 2015, the applicant will pay the fee adjusted to that year).

Staff is recommending that the City Council accept the agreement. CCJDS expects an enrollment of 92 students (8 PM peak hour trips) when the new classroom opens in 2009. Under the agreement, CCJDS would pay a transportation fee of \$43,400 prior to issuance of a building permit for phase 1. Because the applicant is not requesting a fee waiver or reduction and the LFFA's JEPA does not specify when the fee is to be collected, the City of Lafayette will present the agreement to the LFFA at its July 21 meeting as an informational item only.

Fiscal Impact

None.

Recommendation

Accept Agreement.

Attachments

Agreement for Payment of the Lamorinda Transportation Development Mitigation Fee

AGREEMENT FOR PAYMENT OF THE LAMORINDA TRANSPORTATION DEVELOPMENT MITIGATION FEE

This Agreement for Payment of the Lamorinda Transportation Development Mitigation Fee ("**Agreement**") is entered into as of July _____, 2008, by and between the City of Lafayette, a California municipal corporation ("**City**") and Contra Costa Jewish Day School, a nonprofit educational institution ("**CCJDS**"). The City and CCJDS are referred to herein as a "**Party**" and collectively as "**Parties**."

Recitals

- A. On January 31, 2007, CCJDS applied to the City for land use approval to establish a permanent K-8 educational facility in three phases on property owned by Temple Isaiah, located at 3800 Mt. Diablo Boulevard (APN 241-010-046) (the "**New School**"). The first phase of construction of the New School would accommodate up to 180 students ("**First Phase**"). The second and third phases of construction of the New School would accommodate up to an additional 120 students ("**Subsequent Phases**") - for a total of 300 students.
- B. CCJDS's development application for the New School included traffic reports from TJKM Transportation Consultants ("**Traffic Reports**"). The Traffic Reports concluded that the First Phase would produce 15 p.m. peak hour trips and that the Subsequent Phases would produce 10 additional p.m. peak hour trips - for a total of 25 p.m. peak hour trips.
- C. On October 22, 2007, the City determined that the Lamorinda Transportation Development Mitigation Fee ("**Fee**") applied to the New School and that the Fee should be calculated by applying the Lamorinda Fee and Finance Authority's ("**LFFA**") cost per peak hour trip fee rate ("**Fee Rate**") to the p.m. peak hour trips as presented in the Traffic Reports. On November 29, 2007, the LFFA adopted the City's recommendation that the Fee should be calculated by applying the Fee Rate to the p.m. peak hour trips as presented in the Traffic Reports.
- D. On December 6, 2007, the City approved a land use permit, master plan, hillside development permit, design review, grading permit, category II tree permit, and variance for CCJDS to establish the New School.
- E. CCJDS anticipates that student enrollment on opening day for the New School will be approximately 90 students - one half of the 180 students permitted - and that the student population will grow incrementally over a term of many years. Therefore, traffic impacts on opening day for the New School will be less than the 15 p.m. peak hour trips calculated in the Traffic Reports for the First Phase.

F. CCJDS is a small independent religious nonprofit educational institution and is almost entirely funded through individual contributions. CCJDS has determined that payment of the entire Fee in a lump sum upon issuance of building permits would impose financial hardship on CCJDS and would be economically infeasible for CCJDS.

G. Chapter 1-6 of the City's Municipal Code vests the City with authority to determine the timing for disposition of the Fee.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants herein contained, the receipt and sufficiency of which is hereby acknowledged, the City and CCJDS agree as follows:

Agreement

1. Payment of the Fee.

CCJDS shall pay the Fee at the Fee Rate for the First Phase and the Subsequent Phases - for a total of 25 p.m. peak hour trips - as set forth in this Agreement.

2. Notice of Enrollment Figures.

On or before the first day of October of each year, beginning on October 1, 2009, CCJDS shall notify the City and provide documentation that verifies the New School's total student enrollment for the school year then underway ("*Annual Enrollment Figure*").

3. Annual Fee Payment.

Based on the Annual Enrollment Figure, CCJDS shall pay that portion of the Fee due under the Fee Calculation Formula, as discussed below, if any, no later than the thirty-first day of December of each year at the Fee Rate in place for that year ("*Annual Fee Payment*"). However, the Annual Fee Payment for 2008 shall be due on the date of issuance of building permit(s) for the First Phase. Any Annual Fee Payment that is not timely paid, shall accrue interest at the maximum rate permitted by law, until paid in full. If the Annual Fee Payment is not paid within 90 days of when it is due, the City may consider revocation of the land use permit for failure to adequately mitigate traffic impacts.

4. Calculation of the Annual Fee Payment.

A. Calculation Variables.

It is the intention of the Parties that CCJDS pay the Fee in increments pegged to student population growth, based on 12-student benchmarks. The 12-student benchmark is derived from the ratio of New School students to p.m. peak hour trips. The First Phase will accommodate a capacity of up to 180 students and will generate 15 p.m. peak hour trips. The Subsequent Phases will accommodate an additional capacity of 120 students - for a 300-student total population - and will generate 10 additional p.m. peak hour trips, for a total of 25 p.m. peak hour trips at the buildout of all phases. This reflects a ratio of 1 p.m. peak hour trip for every 12-student increase in total student population. Because the Fee Rate is a cost per peak hour trip fee rate, for every

increase in total student population of 12 students, CCJDS shall pay the Fee for one additional p.m. peak hour trip. In the event that the First Phase accommodates more than 180 students, CCJDS shall pay the Annual Fee Payment based upon the total student population and shall not be limited to the fee for 180 students.

Student population at the New School is unlikely to increase by precise increments of 12. Increases in student population, therefore, shall be rounded up to the nearest multiple of 12 for purposes of calculating the Annual Fee Payment. This ratio between the Annual Enrollment Figure and associated p.m. peak hour trips is shown on Table 1:

Table 1	
Annual Enrollment Figure	PM Peak Hour Trips ("Table 1 Trips")
<u>First Phase</u>	--
1-12	1
13-24	2
25-36	3
37-48	4
49-60	5
61-72	6
73-84	7
85-96	8
97-108	9
109-120	10
121-132	11
133-144	12
145-156	13
157-168	14
169-180	15
<u>First Phase/ Subsequent Phases</u>	--
181-192	16
193-204	17
205-216	18
217-228	19
229-240	20
241-252	21
253-264	22
265-276	23
277-288	24
289-300	25

B. Fee Calculation Formula.

The Parties agree that the Fee shall be paid by CCJDS in accordance with the following "***Fee Calculation Formula:***"

2008 Annual Fee Payment. In 2008, CCJDS's Annual Fee Payment shall be paid to the City on the date of issuance of the building permit(s) for construction of the First Phase. On that date, CCJDS shall provide the City with an estimate of its student enrollment for the 2008-2009 school year ("***2008 Estimated Enrollment Figure***"). The 2008 Annual Fee Payment shall be calculated as follows:

(Table 1 Trips for the 2008 Estimated Enrollment Figure) MULTIPLIED BY (the Fee Rate in place for 2008).

CCJDS shall verify and confirm the 2008 Estimated Student Figures and notify the City and provide documentation that verifies the New School's total student enrollment for school year 2008-2009 by October 1, 2008. If more students have enrolled than originally estimated which increases the number of Table 1 Trips, CCJDS shall pay the City for the additional trips at the Fee Rate in place for 2008 no later than the 31st day of December, 2008.

Subsequent Annual Fee Payments. Beginning in 2009, CCJDS's Annual Fee Payment shall be calculated as follows:

(Table 1 Trips for the Annual Enrollment Figure) MINUS (Table 1 Trips for the single highest Annual Enrollment Figure from prior years) MULTIPLIED BY (the Fee Rate for that year).

In any given year when Table 1 Trips for the Annual Enrollment Figure are the same as, or less than, the Table 1 Trips for the single highest Annual Enrollment Figure from prior years, no Annual Fee Payment shall be due.

5. Time of Essence.

Time is of the essence for each and every provision of this Agreement.

6. Attorney's Fees.

If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

7. Successors and Assigns.

This Agreement shall be binding on the successors and assigns of the parties.

8. **Entire Agreement.**

This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

9. **Authority to Enter Agreement.**

CCJDS has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

IN WITNESS WHEREOF the Parties have executed this Agreement as follows:

Dated: July _____, 2008

CITY OF LAFAYETTE

By:

Its: City Manager or Designee

REVIEWED BY:

By:

Its: City Attorney

Dated: July 14, 2008

CONTRA COSTA JEWISH DAY SCHOOL



By: Colin Schlesinger

Its: President, Board of Trustees